IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.132 OF 2006

M/s.Bengal Chemicals
& Pharmaceuticals Ltd. ..Petitioner.

Vs.

Ion Exchange (India) Ltd.
& Anr. ..Respondents.

Mr.M.P.S.Rao with Ms.Rekha Tawade i/b.M/s.M.V.Kini & Co. for the Petitioner.

Mr.U.M.Mahajan i/b.M/s.Divekar & Co. for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 5TH JUNE, 2006

P.C. :

This is a petition under section 34 of the Arbitration and Conciliation Act 1996 to set aside an award of the learned arbitrator dated 11.11.2005.

2. The arbitration agreement is contained in a hire purchase agreement dated 18.2.2002. There is no dispute regarding the agreement. There is no dispute that the arbitration had been validly invoked. The only contention raised on behalf of the Petitioner is that the Petitioner was denied an opportunity of defending itself. The contention is based on allegations made by the Petitioner against

its Advocates. There is no allegation whatever, either against the Respondent or against the learned arbitrator.

3. Admittedly, several meetings had been held before the arbitrator, commencing from 5.11.2004. On 17.12.2004 directions were given for filing pleadings. Thereafter, three meetings were held on 31.3.2005 5.5.2005 and 6.6.2005 when the Petitioner remained absent. On 6.6.2005 the arbitrator understandably closed the reference.

4. It was contended that the Petitioner came to know about the aforesaid three meetings only on 9.6.2005. This contention is bellied by the fact that the Petitioner had itself addressed a letter dated 9.6.2005 wherein the Petitioner expressed shock on having received a letter dated 5.5.2005. The Petitioner expressed its shock for not even having paid the arbitrator’s fees and not having filed its pleadings. The Petitioner contended that it was due to its officers having failed to hand over the details regarding the matter.

5. In these circumstances, an application was made by the Petitioner to the learned arbitrator

requesting him to recall the order dated 6.6.2005 closing the reference. The arbitrator had shown considerable indulgence to the Petitioner by allowing this application despite the fact that there was no fault whatsoever on the part of either the Respondent or the arbitrator. The fault admittedly, if any, was of the Petitioner's Advocates and officers.

6. By an order dated 18.8.2005 the learned arbitrator recalled the order dated 6.6.2005 and directed the Petitioner to file its written statement within 30 days and fixed 20.10.2005 as the next date of hearing. The Petitioner once again failed and neglected to comply with these directions. Instead, the Petitioner sought a further extension on 18.10.2005.

7. The contention on behalf of the Petitioner is that the arbitrator was bound to grant further indulgence. The contention is not well founded. The Petitioner did not even bother to appear on 20.10.2005 before the learned arbitrator. Surely, the Petitioner was not entitled to take the arbitrator for granted.

8. The learned arbitrator has exercised his powers and discretion in the matter. It can hardly be stated that the same was done erroneously. Indeed, in these circumstances, it is impossible to state that the learned arbitrator had acted unfairly or irregularly in any manner whatsoever.

9. Even otherwise, no interference is called for. The main contention of the Petitioner is that whereas, a sum of about Rs.25,00,000/- has been awarded in favour of the Respondent, the Petitioner was entitled to adjust a sum of about Rs.5,00,000/- towards property taxes. The Petitioner is always at liberty to adopt proceedings in accordance with law for the purpose of recovering the same. It was also suggested that certain payments were in fact made under the hire purchase agreement, for which the Petitioner is entitled to credit. Not a single fact in this regard has been stated. There are no averments to substantiate that a single payment has been made for which credit has not been given.

10. In the circumstances, the Petition is dismissed. The Petitioner shall pay to the Respondent, the costs of the Petition, fixed at Rs.5000/- within four weeks from today.